**South Carolina General Assembly**

119th Session, 2011-2012

**H. 3342**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Harrison and Weeks

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Companion/Similar bill(s): 5026

Introduced in the House on January 18, 2011

Introduced in the Senate on May 3, 2011

Last Amended on June 7, 2012

Currently residing in the House

Summary: DUI hearings

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

1/18/2011 House Introduced and read first time ([House Journal‑page 5](file:///h:\hj%20archive\2011\01-18-11.docx))

1/18/2011 House Referred to Committee on **Judiciary** ([House Journal‑page 6](file:///h:\hj%20archive\2011\01-18-11.docx))

3/29/2011 Scrivener's error corrected

4/6/2011 House Member(s) request name added as sponsor: Weeks

4/6/2011 House Committee report: Favorable **Judiciary** ([House Journal‑page 2](file:///h:\hj%20archive\2011\04-06-11.docx))

4/11/2011 Scrivener's error corrected

4/12/2011 House Requests for debate‑Rep(s). Howard, Ott, JH Neal, Sellers, Cobb‑Hunter, Jefferson, King, Sabb, McEachern, Hosey, RL Brown, Gilliard, Bedingfield, Brantley, Erickson, Crawford, Forrester, Lowe, Atwater, and JR Smith ([House Journal‑page 20](file:///h:\hj%20archive\2011\04-12-11.docx))

4/13/2011 House Debate adjourned until Thursday, April 14, 2011 ([House Journal‑page 85](file:///h:\hj%20archive\2011\04-13-11.docx))

4/27/2011 House Amended ([House Journal‑page 31](file:///h:\hj%20archive\2011\04-27-11.docx))

4/27/2011 House Read second time ([House Journal‑page 31](file:///h:\hj%20archive\2011\04-27-11.docx))

4/27/2011 House Roll call Yeas‑64 Nays‑44 ([House Journal‑page 31](file:///h:\hj%20archive\2011\04-27-11.docx))

4/28/2011 House Read third time and sent to Senate ([House Journal‑page 44](file:///h:\hj%20archive\2011\04-28-11.docx))

5/3/2011 Senate Introduced and read first time ([Senate Journal‑page 20](file:///h:\sj%20archive\2011\05-03-11.docx))

5/3/2011 Senate Referred to Committee on **Transportation** ([Senate Journal‑page 20](file:///h:\sj%20archive\2011\05-03-11.docx))

5/5/2011 Senate Recalled from Committee on **Transportation** ([Senate Journal‑page 12](file:///h:\sj%20archive\2011\05-05-11.docx))

5/5/2011 Senate Committed to Committee on **Judiciary** ([Senate Journal‑page 12](file:///h:\sj%20archive\2011\05-05-11.docx))

1/9/2012 Senate Referred to Subcommittee: Hutto (ch), Rose, Shoopman

2/22/2012 Senate Committee report: Favorable **Judiciary** ([Senate Journal‑page 17](file:///h:\sj%20archive\2012\02-22-12.docx))

6/6/2012 Senate Read second time ([Senate Journal‑page 115](file:///h:\sj%20archive\2012\06-06-12.docx))

6/7/2012 Senate Amended ([Senate Journal‑page 88](file:///h:\sj%20archive\2012\06-07-12.docx))

6/7/2012 Senate Roll call Ayes‑41 Nays‑0 ([Senate Journal‑page 88](file:///h:\sj%20archive\2012\06-07-12.docx))

6/7/2012 Senate Read third time and returned to House with amendments ([Senate Journal‑page 88](file:///h:\sj%20archive\2012\06-07-12.docx))

**VERSIONS OF THIS BILL**

[1/18/2011](file:///p:\pprever\2011-12\3342_20110118.docx)

[3/29/2011](file:///p:\pprever\2011-12\3342_20110329.docx)

[4/6/2011](file:///p:\pprever\2011-12\3342_20110406.docx)

[4/11/2011](file:///p:\pprever\2011-12\3342_20110411.docx)

[4/27/2011](file:///p:\pprever\2011-12\3342_20110427.docx)

[2/22/2012](file:///p:\pprever\2011-12\3342_20120222.docx)

[6/7/2012](file:///p:\pprever\2011-12\3342_20120607.docx)

~~Indicates Matter Stricken~~

Indicates New Matter

AS PASSED BY THE SENATE

June 7, 2012

**H. 3342**

Introduced by Reps. Harrison and Weeks

S. Printed 6/7/12--S.

Read the first time May 3, 2011.

**A** **BILL**

TO AMEND SECTION 56-1-286, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE SUSPENSION OR DENIAL OF ISSUANCE OF A DRIVER’S LICENSE OR PERMIT TO OPERATE A MOTOR VEHICLE TO CERTAIN PERSONS WHO DRIVE A MOTOR VEHICLE WITH AN UNLAWFUL ALCOHOL CONCENTRATION, SO AS TO DELETE THE TERM “ADMINISTRATIVE HEARING” AND REPLACE IT WITH THE TERM “CONTESTED CASE HEARING”, TO PROVIDE THAT A CONTESTED CASE HEARING MUST BE HELD BEFORE THE OFFICE OF MOTOR VEHICLE HEARINGS PURSUANT TO ITS RULES OF PROCEDURE, AND TO DELETE THE TERM “DIVISION OF MOTOR VEHICLE HEARINGS” AND REPLACE IT WITH THE TERM “OFFICE OF MOTOR VEHICLE HEARINGS”; TO AMEND SECTION 56‑5‑2942, AS AMENDED, RELATING TO VEHICLE IMMOBILIZATION AFTER A CONVICTION FOR DRIVING A VEHICLE UNDER THE INFLUENCE OF ALCOHOL, DRUGS, OR ANOTHER ILLEGAL SUBSTANCE, SO AS TO REVISE THE PROCEDURE WHEREBY THE DEPARTMENT OF MOTOR VEHICLES MAY RELEASE AN IMMOBILIZED VEHICLE REGISTERED TO A PERSON WHO HAS NOT BEEN CONVICTED OF DRIVING A VEHICLE UNDER THE INFLUENCE OF ALCOHOL, DRUGS, OR ANOTHER UNLAWFUL SUBSTANCE; TO AMEND SECTION 56‑5‑2951, AS AMENDED, RELATING TO THE SUSPENSION OF A PERSON’S DRIVER’S LICENSE OR PERMIT FOR HIS REFUSAL TO SUBMIT TO A TEST TO DETERMINE HIS LEVEL OF ALCOHOL CONCENTRATION, SO AS TO DELETE THE TERM “ADMINISTRATIVE HEARING” AND REPLACE IT WITH THE TERM “CONTESTED CASE HEARING”, TO PROVIDE THAT ADMINISTRATIVE HEARINGS ARE HELD BEFORE THE OFFICE OF MOTOR VEHICLE HEARINGS AND NOT THE DEPARTMENT OF MOTOR VEHICLES, AND TO PROVIDE THAT THE DEPARTMENT OF MOTOR VEHICLES IS RESPONSIBLE FOR SENDING A HEARING OFFICER’S DECISION TO A PERSON WHO IS ELIGIBLE TO RECEIVE A RESTRICTED LICENSE PURSUANT TO THIS SECTION; AND TO AMEND SECTION 56‑5‑2952, AS AMENDED, RELATING TO THE FILING FEE TO REQUEST A CONTESTED CASE HEARING BEFORE THE OFFICE OF MOTOR VEHICLE HEARINGS, SO AS TO INCREASE THE FEE, TO DELETE THE TERM “ADMINISTRATIVE LAW COURT” AND REPLACE IT WITH THE TERM “OFFICE OF MOTOR VEHICLE HEARINGS”, AND REVISE THE PROCEDURE FOR DISTRIBUTING FUNDS GENERATED FROM THE COLLECTION OF THESE FEES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 56‑1‑286 of the 1976 Code is amended to read:

“Section 56-1-286. (A) The Department of Motor Vehicles ~~must~~ shall suspend the driver's license, permit, or nonresident operating privilege of, or deny the issuance of a license or permit to a person under the age of twenty‑one who drives a motor vehicle and has an alcohol concentration of two one‑hundredths of one percent or more. In cases in which a law enforcement officer initiates suspension proceedings for a violation of this section, the officer has elected to pursue a violation of this section and is subsequently prohibited from prosecuting the person for a violation of Section 63‑19‑2440, 63‑19‑2450, 56‑5‑2930, or 56‑5‑2933, arising from the same incident.

(B) A person under the age of twenty‑one who drives a motor vehicle in this State is considered to have given consent to chemical tests of ~~his~~ the person’s breath or blood for the purpose of determining the presence of alcohol.

(C) A law enforcement officer who has arrested a person under the age of twenty‑one for a violation of Chapter 5 of this title (Uniform Act Regulating Traffic on Highways), or any other traffic offense established by a political subdivision of this State, and has reasonable suspicion that the person under the age of twenty‑one has consumed alcoholic beverages and driven a motor vehicle may order the testing of the person arrested to determine the person's alcohol concentration.

A law enforcement officer may detain and order the testing of a person to determine the person's alcohol concentration if the officer has reasonable suspicion that a motor vehicle is being driven by a person under the age of twenty‑one who has consumed alcoholic beverages.

(D) A test must be administered at the direction of the primary investigating law enforcement officer. At the direction of the officer, the person first ~~must~~ shall be offered a breath test to determine the person's alcohol concentration. If the person physically is unable to provide an acceptable breath sample because ~~he~~ the person has an injured mouth or is unconscious or dead, or for any other reason considered acceptable by licensed medical personnel, a blood sample may be taken. The breath test must be administered by a person trained and certified by the South Carolina Criminal Justice Academy, pursuant to SLED policies. The primary investigating officer may administer the test. Blood samples must be obtained by physicians licensed by the State Board of Medical Examiners, registered nurses licensed by the State Board of Nursing, or other medical personnel trained to obtain these samples in a licensed medical facility. Blood samples must be obtained and handled in accordance with procedures approved by the division. The division shall administer the provisions of this subsection and shall promulgate regulations necessary to carry out its provisions. The costs of the tests administered at the direction of the officer must be paid from the general fund of the State. However, if the person is subsequently convicted of violating Section 56‑5‑2930, 56‑5‑2933, or 56‑5‑2945, then, upon conviction, the person ~~must~~ shall pay twenty‑five dollars for the costs of the tests. The twenty‑five dollars must be placed by the Comptroller General into a special restricted account to be used by the State Law Enforcement Division to offset the costs of administration of the breath testing devices, breath testing site video program, and toxicology laboratory.

The person tested or giving samples for testing may have a qualified person of ~~his~~ the person’s choice conduct additional tests at the person's expense and must be notified in writing of that right. A person's request or failure to request additional blood tests is not admissible against the person in any proceeding. The failure or inability of the person tested to obtain additional tests does not preclude the admission of evidence relating to the tests or samples taken at the direction of the officer. The officer ~~must~~ shall provide affirmative assistance to the person to contact a qualified person to conduct and obtain additional tests. Affirmative assistance ~~shall~~ must, at a minimum, include providing transportation for the person to the nearest medical facility which provides blood tests to determine a person's alcohol concentration. If the medical facility obtains the blood sample but refuses or fails to test the blood to determine the person's alcohol concentration, SLED ~~must~~ shall test the blood and provide the result to the person and to the officer. Failure to provide affirmative assistance upon request to obtain additional tests bars the admissibility of the breath test result in ~~any~~ a judicial or administrative proceeding.

(E) A qualified person and ~~his~~ the qualified person’s employer who obtain samples or administer the tests or assist in obtaining samples or administering of tests at the direction of the primary investigating officer are immune from civil and criminal liability unless the obtaining of samples or the administering of tests is performed in a negligent, reckless, or fraudulent manner. A person may not be required by the officer ordering the tests to obtain or take any sample of blood or urine.

(F) ~~If~~ Except as provided in subsection (H), if a person refuses upon the ~~request of the~~ primary investigating ~~officer~~ officer’s request to submit to chemical tests as provided in subsection (C), the department ~~must~~ shall suspend ~~his~~ the person’s license, permit, or ~~any~~ nonresident operating privilege, or deny the issuance of a license or permit to ~~him~~ the person for:

(1) six months; or

(2) one year, if the person, within the five years preceding the violation of this section, has been previously convicted of violating Section 56‑5‑2930, 56‑5‑2933, ~~or~~ 56‑5‑2945, or ~~any other~~ a law of ~~this State or~~ another state that prohibits a person from driving a motor vehicle while under the influence of alcohol or ~~another drug~~ other drugs, or the person has had a previous suspension imposed pursuant to Section 56‑1‑286, ~~56‑5‑2950, or~~ 56‑5‑2951, or 56-5-2990.

(G) ~~If~~ Except as provided in subsection (H), if a person submits to a chemical test and the test result indicates an alcohol concentration of two one‑hundredths of one percent or more, the department ~~must~~ shall suspend ~~his~~ the person’s license, permit, or ~~any~~ nonresident operating privilege, or deny the issuance of a license or permit to ~~him~~ the person for:

(1) three months; or

(2) six months, if the person, within the five years preceding the violation of this section, has been previously convicted of violating Section 56‑5‑2930, 56‑5‑2933, ~~or~~ 56‑5‑2945, or ~~any other~~ a law of ~~this State or~~ another state that prohibits a person from driving a motor vehicle while under the influence of alcohol or ~~another drug~~ other drugs, or the person has had a previous suspension imposed pursuant to Section 56‑1‑286, ~~56‑5‑2950, or~~ 56‑5‑2951, or 56-5-2990.

(H) In lieu of serving the remainder of a suspension or denial of the issuance of a license or permit, a person may enroll in the Ignition Interlock Device Program pursuant to Section 56-5-2941, end the suspension, and obtain an ignition interlock restricted license pursuant to Section 56-1-400. The ignition interlock device is required to be affixed to the motor vehicle equal to the length of time the person would originally have been subject to suspension or denial of the issuance of a license or permit. Once a person has enrolled in the Ignition Interlock Device Program and obtained an ignition interlock restricted license, the person is subject to Section 56-5-2941 and cannot subsequently choose to serve the suspension.

~~(H)~~(I) A person's driver's license, permit, or nonresident operating privilege must be restored when the person's period of suspension or ignition interlock restricted license under subsection (F) or (G) has concluded, even if the person has not yet completed the Alcohol and Drug Safety Action Program in which ~~he~~ the person is enrolled. After the person's driving privilege is restored, ~~he must~~ the person shall continue to participate in the Alcohol and Drug Safety Action Program ~~in which he is enrolled~~. If the person withdraws from or in any way stops making satisfactory progress toward the completion of the Alcohol and Drug Safety Action Program, the person's license must be suspended until ~~he completes~~ the completion of the Alcohol and Drug Safety Action Program. A person ~~must~~ shall be attending or have completed an Alcohol and Drug Safety Action Program pursuant to Section 56‑5‑2990 before ~~his~~ the person’s driving privilege can be restored at the conclusion of the suspension period or ignition interlock restricted license requirement.

~~(I)~~(J) A test may not be administered or samples taken unless, upon activation of the video recording equipment and prior to the commencement of the testing procedure, the person has been given a written copy of and verbally informed that:

(1) ~~he~~ the person does not have to take the test or give the samples but that ~~his~~ the person’s privilege to drive must be suspended or denied for at least six months, or, as an alternative, the person may enroll in the Ignition Interlock Device Program for at least six months, if ~~he~~ the person refuses to submit to the tests, and that ~~his~~ the person’s refusal may be used against ~~him~~ the person in court;

(2) ~~his~~ the person’s privilege to drive must be suspended for at least three months, or, as an alternative, the person may enroll in the Ignition Interlock Program for at least three months, if ~~he~~ the person takes the test or gives the samples and has an alcohol concentration of two one‑hundredths of one percent or more;

(3) ~~he~~ the person has the right to have a qualified person of ~~his~~ the person’s own choosing conduct additional independent tests at ~~his~~ the person’s expense;

(4) ~~he~~ the person has the right to request ~~an administrative~~ a contested case hearing within thirty days of the issuance of the notice of suspension; and

(5) ~~he must~~ the person shall enroll in an Alcohol and Drug Safety Action Program within thirty days of the issuance of the notice of suspension if ~~he~~ the person does not request ~~an administrative~~ a contested case hearing or within thirty days of the issuance of notice that the suspension has been upheld at the ~~administrative~~ contested case hearing.

The primary investigating officer ~~must notify~~ shall promptly notify the department of the person’s refusal ~~of a person~~ to submit to a test requested pursuant to this section as well as the test result of ~~any~~ a person who submits to a test pursuant to this section and registers an alcohol concentration of two one‑hundredths of one percent or more. The notification ~~must~~ shall be in a manner prescribed by the department.

~~(J)~~(K) If the test registers an alcohol concentration of two one‑hundredths of one percent or more or if the person refuses to be tested, the primary investigating officer ~~must~~ shall issue a notice of suspension, and the suspension is effective beginning on the date of the alleged violation of this section. The person, within thirty days of the issuance of the notice of suspension, ~~must~~ shall enroll in an Alcohol and Drug Safety Action Program pursuant to Section 56‑5‑2990 if ~~he~~ the person does not request ~~an administrative~~ a contested case hearing. If the person does not request ~~an administrative~~ a contested case hearing and does not enroll in an Alcohol and Drug Safety Action Program within thirty days, the suspension remains in effect, and a temporary alcohol license must not be issued. If the person drives a motor vehicle during the period of suspension without a temporary alcohol license, the person must be penalized for driving while ~~his~~ the person’s license is suspended pursuant to Section 56‑1‑460.

~~(K)~~(L) Within thirty days of the issuance of the notice of suspension the person may:

(1) obtain a temporary alcohol license by filing with the department a form for this purpose. A one‑hundred‑dollar fee must be assessed for obtaining a temporary alcohol license. Twenty‑five dollars of the fee must be retained by the Department of Public Safety for supplying and maintaining all necessary vehicle videotaping equipment. The remaining seventy‑five dollars must be placed by the Comptroller General into a special restricted account to be used by the Department of Motor Vehicles to defray ~~it’s~~ the Department of Motor Vehicle’s expenses. The temporary alcohol license allows the person to drive a motor vehicle without any restrictive conditions pending the outcome of the ~~administrative~~ contested case hearing provided for in this section or the final decision or disposition of the matter; and

(2) request ~~an administrative~~ a contested case hearing before the Office of Motor Vehicle Hearings pursuant to its rules of procedure.

At the ~~administrative~~ contested case hearing if:

(a) the suspension is upheld, the person ~~must~~ shall enroll in an Alcohol and Drug Safety Action Program and ~~his~~ the person’s driver's license, permit, or nonresident operating privilege must be suspended or the person must be denied the issuance of a license or permit for the remainder of the suspension periods provided for in subsections (F) and (G); or

(b) the suspension is overturned, the person must have ~~his~~ the person’s driver's license, permit, or nonresident operating privilege reinstated.

~~(L)~~(M) The periods of suspension provided for in subsections (F) and (G) begin on the day the notice of suspension is issued, or at the expiration of any other suspensions, and continue until the person applies for a temporary alcohol license and requests ~~an administrative~~ a contested case hearing.

~~(M)~~(N) If a person does not request ~~an administrative~~ a contested case hearing, ~~he shall have~~ the person waived ~~his~~ the person’s right to the hearing and ~~his~~ the person’s suspension must not be stayed but ~~shall~~ must continue for the periods provided for in subsections (F) and (G).

~~(N)~~(O) The notice of suspension must advise the person of the requirement to enroll in an Alcohol and Drug Safety Action Program and of ~~his~~ the person’s right to obtain a temporary alcohol license and to request ~~an administrative~~ a contested case hearing. The notice of suspension also must advise the person that, if ~~he~~ the person does not request ~~an administrative~~ a contested case hearing within thirty days of the issuance of the notice of suspension, ~~he must~~ the person shall enroll in an Alcohol and Drug Safety Action Program, and ~~he~~ the person waives ~~his~~ the person’s right to the ~~administrative~~ contested case hearing, and the suspension continues for the periods provided for in subsections (F) and (G).

~~(O)~~(P) ~~An administrative~~ A contested case hearing must be held after the request for the hearing is received by the ~~Division~~ Office of Motor Vehicle Hearings. The scope of the hearing is limited to whether the person:

(1) was lawfully arrested or detained;

(2) was given a written copy of and verbally informed of the rights enumerated in subsection ~~(I)~~(J);

(3) refused to submit to a test pursuant to this section; or

(4) consented to taking a test pursuant to this section, and the:

(a) reported alcohol concentration at the time of testing was two one‑hundredths of one percent or more;

(b) individual who administered the test or took samples was qualified pursuant to this section;

(c) test administered and samples taken were conducted pursuant to this section; and

(d) the machine was operating properly.

Nothing in this section prohibits the introduction of evidence at the ~~administrative~~ contested case hearing on the issue of the accuracy of the breath test result.

The Department of Motor Vehicles and the arresting officer shall have the burden of proof in contested case hearings conducted pursuant to this section. If neither the Department of Motor Vehicles nor the arresting officer appears at the contested case hearing, the hearing officer shall rescind the suspension of the person’s license, permit, or nonresident’s operating privilege regardless of whether the person requesting the contested case hearing or the person’s attorney appears at the contested case hearing.

A written order must be issued to all parties either reversing or upholding the suspension of the person's license, permit, or nonresident's operating privilege, or denying the issuance of a license or permit. If the suspension is upheld, the person must receive credit for the number of days ~~his~~ the person’s license was suspended before ~~he~~ the person received a temporary alcohol license and requested the ~~administrative~~ contested case hearing.

~~(P)~~(Q) ~~An administrative~~ A contested case hearing is a contested proceeding under the Administrative Procedures Act, and a person has a right to appeal the decision of the hearing officer pursuant to that act to the Administrative Law Court in accordance with its appellate rules. The filing of an appeal shall stay the suspension until a final decision is issued.

~~(Q)~~(R) A person who is unconscious or otherwise in a condition rendering ~~him~~ the person incapable of refusal is considered to be informed and not to have withdrawn the consent provided for in subsection (B) of this section.

~~(R)~~(S) When a nonresident's privilege to drive a motor vehicle in this State has been suspended under the procedures of this section, the department shall give written notice of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which ~~he~~ the person has a license or permit.

~~(S)~~(T) A person required to submit to a test must be provided with a written report including the time of arrest, the time of the tests, and the results of the tests before any proceeding in which the results of the tests are used as evidence. A person who obtains additional tests shall furnish a copy of the time, method, and results of any additional tests to the officer before ~~any~~ a trial, hearing, or other proceeding in which the person attempts to use the results of the additional tests as evidence.

~~(T)~~(U) A person whose driver's license or permit is suspended under this section is not required to file proof of financial responsibility.

~~(U)~~(V) The department shall administer the provisions of this section, not including subsection (D), and shall promulgate regulations necessary to carry out ~~its~~ this section’s provisions.

~~(V)~~(W) Notwithstanding any other provision of law, no suspension imposed pursuant to this section is counted as a demerit or result in ~~any~~ an insurance penalty for automobile insurance purposes if at the time ~~he~~ the person was stopped, the person whose license is suspended had an alcohol concentration that was less than eight one‑hundredths of one percent.”

SECTION 2. Section 56‑1‑400 of the 1976 Code is amended to read:

“Section 56-1-400. (A) The Department of Motor Vehicles, upon suspending or revoking a license, shall require that ~~such~~ the license ~~shall~~ be surrendered to the ~~Department of Motor Vehicles~~ department. At the end of the suspension period ~~of suspension~~, other than a suspension for reckless driving, driving under the influence of intoxicants, or pursuant to the point system ~~such license so surrendered shall be returned to the licensee, or in the discretion of the Department of Motor Vehicles~~, the department shall issue a new license ~~issued~~ to ~~him~~ the person. The ~~Department of Motor Vehicles~~ department shall not ~~return nor~~ restore a license which has been suspended for reckless driving, driving under the influence of intoxicants, or for violations under the point system until the person has filed an application for a new license, submitted to an examination as upon an original application, and has satisfied the ~~Department of Motor Vehicles~~ department, after an investigation of the person’s character, habits, and driving ability ~~of the person~~, that it would be safe to grant ~~him~~ the person the privilege of driving a motor vehicle on the public highways. ~~Provided, the Department of Motor Vehicles, in its discretion the department~~ The department, where the suspension is for a violation under the point system, may waive ~~such~~ the examination, application, and investigation. A record of the suspension ~~shall~~ must be endorsed on the license ~~returned to the licensee, or the new license~~ issued to the ~~licensee~~ person, showing the grounds of ~~such~~ the suspension. ~~In the case of a license suspended for driving under the influence of intoxicants~~ If a person is permitted to operate a motor vehicle only with an ignition interlock device installed pursuant to Section 56-5-2941, the restriction on the license ~~returned to the licensee, or the new license~~ issued to the ~~licensee~~ person, must conspicuously identify the ~~licensee~~ person as a person who may only drive a motor vehicle with an ignition interlock device installed and the restriction must be maintained on the license for the duration of the period for which the ignition interlock device must be maintained pursuant to Section ~~56‑5‑2941~~ 56-1-286, 56-5-2945, 56-5-2951, or 56-5-2990. For purposes of Title 56, the license must be referred to as an ignition interlock restricted license. Unless the person establishes that ~~he~~ the person is entitled to the exemption set forth in subsection (B), no ignition interlock restricted license ~~containing an ignition interlock device restriction shall~~ may be issued by the ~~Department of Motor Vehicles~~ department without written notification from the authorized ignition interlock service provider that the ignition interlock device has been installed and confirmed to be in working order. If a person chooses to not have an ignition interlock device installed when required by law, the license will remain suspended ~~for three years from the date the suspension for driving under the influence of intoxicants ends~~ indefinitely. If ~~during this three‑year period~~ the person subsequently decides to have the ignition interlock device installed, the device must be installed for the ~~full suspension period or until the end of the three‑year period, whichever comes first~~ length of time set forth in Section 56‑1‑286, 56‑5‑2945, 56‑5‑2951, or 56‑5‑2990, and the person cannot choose to subsequently serve the suspension. This provision ~~shall~~ does not affect nor bar the reckoning of prior offenses for reckless driving and driving under the influence of intoxicating liquor or narcotic drugs, as provided in Article 23 of Chapter 5 of this title.

(B)(1) A person who does not own a vehicle, as shown in the Department of Motor Vehicles' records, and who certifies that ~~he~~ the person:

(a) cannot obtain a vehicle owner’s permission to have an ignition interlock device installed on a vehicle;

(b) will not be driving ~~any~~ a vehicle other than the one owned by ~~his~~ the person’s employer; and

(c) ~~that he~~ will not own a vehicle during the interlock period, may petition the ~~Department of Motor Vehicles~~ department, on a form provided by ~~it~~ the department, for issuance of ~~a~~ an ignition interlock restricted license ~~containing an ignition interlock device restriction,~~ that permits the person to operate a vehicle specified by the employee according to the employer’s needs as contained in the employer’s statement during the days and hours specified in the employer’s statement without having to show that an ignition interlock device has been installed. The form must contain:

(i) identifying information about the employer’s noncommercial vehicles the person will be operating;

(ii) a statement that explains the circumstances in which the person will be operating the employer’s vehicles; and

(iii) the notarized signature of the person’s employer.

(2) This subsection does not apply to a person who is self-employed or to a person who is employed by a business owned in whole or in part by the person or a member of the person’s household or immediate family unless during the defense of a criminal charge, the court finds that the vehicle’s ownership by the business serves a legitimate business purpose and that titling and registration of the vehicle by the business was not done to circumvent the intent of this section. This subsection also does not apply within a year of the beginning of the suspension of a person who is convicted for a second or subsequent conviction of Section 56-5-2930, 56-5-2933, 56-5-2945, or a law of another state that prohibits a person from driving a motor vehicle while under the influence of alcohol or other drugs, is required to have an ignition interlock installed pursuant to Section 56-5-2945 or 56-5-2990.

(3) Whenever the person operates the employer’s vehicle pursuant to this subsection, the person shall have with the person a copy of the form specified by this subsection.

(4) The determination of eligibility for ~~this~~ the waiver is subject to periodic review at the discretion of the ~~Department of Motor Vehicles~~ ~~department~~. The ~~Department of Motor Vehicles must~~ department shall revoke a ~~license~~ waiver issued pursuant to this exemption if ~~it~~ the department determines that the person has been driving a vehicle other than the one owned by ~~his~~ the person’s employer or has been operating the person’s employer’s vehicle outside the locations, days, or hours specified by the employer in the department’s records. The person may seek relief from the ~~Department of Motor Vehicle's~~ department’s determination by filing a request for a contested case hearing with the Office of Motor Vehicle Hearings pursuant to the Administrative Procedures Act and the rules of procedure for the Office of Motor Vehicle Hearings. However, the filing of a request for a contested case hearing will not stay the revocation of the waiver pending the hearing.

(C) Any person whose license has been suspended or revoked for an offense within the jurisdiction of the court of general sessions shall provide the Department of Motor Vehicles with proof that the fine owed by the person has been paid before the ~~Department of Motor Vehicles~~ department may ~~return or~~ issue the person a license. Proof that the fine has been paid may be a receipt from the clerk of court of the county in which the conviction occurred stating that the fine has been paid in full.”

SECTION 3. Section 56‑1‑748 of the 1976 Code is amended to read:

“Section 56-1-748. No person issued a restricted driver's license under the provisions of Section 56‑1‑170(B), ~~Section~~ 56‑1‑320(A), ~~Section~~ 56‑1‑740(B), 56-1-745(C), ~~Section~~ 56‑1‑746 (D), ~~Section~~ 56‑5‑750(G), ~~Section~~ 56‑9‑430(B), ~~Section~~ 56‑10‑260(B), ~~Section~~ 56‑10‑270(C), ~~or Section~~ 56‑5‑2951~~(H)~~, or 56-5-2990 shall subsequently be eligible for issuance of a restricted driver's license under these provisions.”

SECTION 4. Section 56‑1‑1320(A) of the 1976 Code is amended to read:

“(A) A person with a South Carolina driver's license, a person who had a South Carolina driver's license at the time of the offense referenced below, or a person exempted from the licensing requirements by Section 56‑1‑30, who is or has been convicted of a first offense violation of ~~an ordinance of a municipality, or~~ a law of this State~~,~~ that prohibits a person from operating a vehicle while under the influence of intoxicating liquor, drugs, or narcotics, including Section 56‑5‑2930 and ~~Section~~ 56‑5‑2933, and whose license is not presently suspended for any other reason, may apply to the Department of Motor Vehicles to obtain a provisional driver's license of a design to be determined by the department to operate a motor vehicle. The person shall enter an Alcohol and Drug Safety Action Program as provided for in Section 56‑1‑1330, shall furnish proof of responsibility as provided for in Section 56‑1‑1350, and shall pay to the department a fee of one hundred dollars for the provisional driver's license. The provisional driver's license is not valid for more than six months from the date of issue shown on the license. ~~The determination of whether or not a provisional driver's license may be issued pursuant to the provisions of this article as well as reviews of cancellations or suspensions under Sections 56‑1‑370 and 56‑1‑820 must be made by the director of the department or his designee.~~”

SECTION 5. Section 56‑5‑2941 of the 1976 Code is amended to read:

“Section 56-5-2941. (A) ~~Except as otherwise provided in this section, in addition to the penalties required and authorized to be imposed against a person violating the provisions of Section 56‑5‑2930, 56‑5‑2933, or 56‑5‑2945, or violating the provisions of another law of any other state that prohibits a person from driving a motor vehicle while under the influence of alcohol or other drugs~~ Pursuant to Section 56-5-2945 and 56-5-2990, the Department of Motor Vehicles ~~must~~ shall require ~~the~~ a person~~, if he is a subsequent offender and a resident of this State,~~ who has violated the provisions of Section 56-5-2930, 56-5-2933, 56-5-2945, or a law of another state that prohibits a person from driving a motor vehicle while under the influence of alcohol or other drugs to have installed on any motor vehicle the person drives an ignition interlock device designed to prevent driving of the motor vehicle if the person has consumed alcoholic beverages. The ~~Department of Motor Vehicles~~ department may waive the requirements of this section if ~~it~~ the department ~~finds~~ determines that the ~~offender~~ person has a medical condition that makes ~~him~~ the person incapable of properly operating the installed ignition interlock device. However, the department may not waive the requirements of this section for a period of one year from the beginning of a subsequent suspension pursuant to Section 56‑5‑2930, Section 56‑5‑2933, Section 56‑5‑2945, or a law of another state that prohibits a person from driving a motor vehicle while under the influence of alcohol or other drugs. If the department grants a waiver, the department shall suspend the person’s driver’s license for the length of time that the person would have been required to hold an ignition interlock restricted license pursuant to Section 56‑5‑2945 and 56‑5‑2990. The department shall also require a person who has enrolled in the Ignition Interlock Device Program in lieu of the remainder of a driver’s license suspension or denial of the issuance of a driver’s license or permit pursuant to Section 56-1-286, 56-5-2945, 56-5-2951, 56-5-2990 to have an ignition interlock device installed on any motor vehicle the person drives. The length of time that an ignition interlock device is required to be affixed to a motor vehicle is set forth in Section 56-1-286, 56-5-2945, 56-5-2951, and 56-5-2990 ~~following the completion of a period of license suspension imposed on the offender is two years for a second offense, three years for a third offense, and the remainder of the offender's life for a fourth or subsequent offense~~.

(B) Notwithstanding the pleadings, for purposes of a second or a subsequent offense, the specified length of time that an ignition interlock device is required to be affixed to a motor vehicle is based on the Department of Motor Vehicle's records for offenses pursuant to ~~Section~~ Sections 56-1-286, ~~Section~~ 56‑5‑2930, 56‑5‑2933, ~~or~~ 56‑5‑2945, 56-5-2950, or 56-5-2951.

~~(B)~~(C) If a ~~person who is a subsequent offender and a~~ resident of this State is convicted of violating ~~the provisions of~~ a law of ~~any other~~ another state that prohibits a person from driving a motor vehicle while under the influence of alcohol or other drugs, and, as a result of the conviction, the person is subject to an ignition interlock device requirement in the other state, the person is subject to the requirements of this section for the length of time that would have been required for an offense committed in South Carolina, or for the length of time that is required by the other state, whichever is longer.

~~(C)~~(D) If a person from another state becomes a resident of South Carolina while subject to an ignition interlock device requirement in another state, the person may only obtain a South Carolina driver's license if the person enrolls in the South Carolina ~~ignition interlock device program~~ Ignition Interlock Device Program pursuant to this section. The person is subject to the requirements of this section for the length of time that would have been required for an offense committed in South Carolina, or for the length of time that is required by the other state, whichever is longer.

~~(D)~~(E) The ~~offender~~ person shall be subject to an Ignition Interlock Device Point System managed by the Department of Probation, Parole and Pardon Services.

(1) ~~An offender~~ A person receiving a total of:

(a) two points will have ~~their~~ the length of time that the ignition interlock device is required extended by two months~~.~~;

(b) ~~An offender receiving a total of~~ three points will have ~~their~~ the length of time that the ignition interlock device is required extended by four months, ~~and must~~ shall submit to a substance abuse assessment pursuant to Section 56‑5‑2990, and successfully complete the plan of education and treatment, or both, as recommended by the certified substance abuse program. Should the ~~individual~~ person not complete the recommended plan, or not make progress toward completing the plan, the Department of Motor Vehicles ~~must~~ shall suspend the ~~individual's driver's~~ person’s ignition interlock restricted license until the plan is completed or progress is being made toward completing the plan~~.~~;

(c) ~~An offender receiving a total of~~ four points ~~shall~~ will have ~~their~~ the person’s ignition interlock restricted license suspended for a period of ~~one year~~ three months, ~~and~~ shall submit to a substance abuse assessment pursuant to Section 56‑5‑2990, and successfully complete the plan of education and treatment, or both, as recommended by the certified substance abuse program. ~~Completion of the plan is mandatory as a condition of reinstatement of the person's driving privileges.~~ Should the person not complete the recommended plan, or not make progress toward completing the plan, the Department of Motor Vehicles shall leave the person’s ignition interlock restricted license in suspended status, or, if the license has already been reinstated following the three month suspension, shall re-suspend the person’s ignition interlock restricted license until the plan is completed or progress is being made toward completing the plan. The Department of Alcohol and Other Drug Abuse Services is responsible for notifying the Department of Motor Vehicles of ~~an individual's~~ a person’s completion and compliance with education and treatment programs. Upon reinstatement of driving privileges following the three month suspension, the Department of Probation, Parole and Pardon Services shall reset the person’s point total to zero points.

~~(E)~~(F) The cost of the ignition interlock device must be borne by the ~~offender~~ person. However, if the ~~offender~~ person believes ~~he~~ the person is indigent and cannot afford the cost of the ignition interlock device, the ~~offender~~ person may submit an affidavit of indigency to the Department of Probation, Parole and Pardon Services for a determination of indigency as it pertains to the cost of the ignition interlock device. The affidavit of indigency form must be made publicly accessible on the Department of Probation, Parole and Pardon Services' Internet web site. If the Department of Probation, Parole and Pardon Services determines that the ~~offender~~ person is indigent as it pertains to the ignition interlock device, ~~it~~ the Department of Probation, Parole and Pardon Services may authorize an ignition interlock device to be affixed to the motor vehicle and the cost of the initial installation and standard use of the ignition interlock device to be paid for by the Ignition Interlock Device Fund managed by the Department of Probation, Parole and Pardon Services. Funds remitted to the Department of Probation, Parole and Pardon Services for the Ignition Interlock Device Fund may also be used by the Department of Probation, Parole and Pardon Services to support the Ignition Interlock Device Program. For purposes of this section, a person is indigent if the person is financially unable to afford the cost of the ignition interlock device. In making a determination whether a person is indigent, all factors concerning the person's financial conditions should be considered including, but not limited to, income, debts, assets, number of ~~dependants~~ dependents claimed for tax purposes, living expenses, and family situation. A presumption that the person is indigent is created if the person's net family income is less than or equal to the poverty guidelines established and revised annually by the United States Department of Health and Human Services published in the Federal Register. ‘Net income’ means gross income minus deductions required by law. The determination of indigency is subject to periodic review at the discretion of the Department of Probation, Parole and Pardon Services.

~~(F)~~(G) The ignition interlock service provider ~~must~~ shall collect and remit monthly to the Ignition Interlock Device Fund a fee as determined by the Department of Probation, Parole and Pardon Services not to exceed ~~three hundred sixty~~ thirty dollars per ~~year~~ month for each ~~year~~ month the person is required to drive a vehicle with an ignition interlock device. Any ignition interlock service provider failing to properly remit funds to the Ignition Interlock Device Fund may be decertified as an ignition interlock service provider by the Department of Probation, Parole and Pardon Services. If a service provider is decertified for failing to remit funds to the Ignition Interlock Device Fund, the cost for removal and replacement of an ignition interlock device must be borne by the service provider.

~~(G)~~(H) The ~~offender must~~ person shall have the ignition interlock device inspected every sixty days to verify that the ignition interlock device is affixed to the motor vehicle and properly operating, and to allow for the preparation of an ignition interlock device inspection report by the service provider indicating the ~~offender's~~ person’s alcohol content at each attempt to start and running ~~re‑test~~ retest during each sixty‑day period. Only a service provider authorized by the Department of Probation, Parole and Pardon Services to perform inspections on ignition interlock devices may conduct inspections. The service provider immediately ~~must~~ shall report any devices that fail inspection to the Department of Probation, Parole and Pardon Services. The report must contain the name of the ~~offender~~ person, identify the vehicle upon which the failed device is installed and the reason for the failed inspection, and indicate the ~~offender's~~ person’s alcohol content at each attempt to start and running ~~re‑test~~ retest during each sixty‑day period. Failure of the ~~offender~~ person to have the ignition interlock device inspected every sixty days will result in one ignition interlock device point. ~~Upon review of the interlock device inspection report, if the report reflects that the offender attempted to start the motor vehicle with an alcohol concentration of two one‑hundredths of one percent or more, the offender is assessed one‑half interlock device point.~~ Upon review of the ignition interlock device inspection report, if the report reflects that the ~~offender~~ person violated a running ~~re‑test~~ retest by having an alcohol concentration between two one‑hundredths of one percent and less than four one‑hundredths of one percent, the ~~offender~~ person is assessed one‑half ignition interlock device point. Upon review of the ignition interlock device inspection report, if the report reflects that the ~~offender~~ person violated a running ~~re‑test~~ retest by having an alcohol concentration between four one‑hundredths of one percent and less than fifteen one‑hundredths of one percent, the ~~offender~~ person is assessed one ignition interlock device point. Upon review of the ignition interlock device inspection report, if the report reflects that the ~~offender~~ person violated a running ~~re‑test~~ retest by having an alcohol concentration above fifteen one‑hundredths of one percent, the ~~offender~~ person is assessed two ignition interlock device points. Upon review of the ignition interlock device inspection report, if the report reflects that the person has failed to complete a running retest, the person must be assessed one ignition interlock device point. ~~An individual~~ A person may appeal any ignition interlock device points received to an administrative hearing officer with the Department of Probation, Parole and Pardon Services through a process established by the Department of Probation, Parole and Pardon Services. The administrative hearing officer's decision on appeal ~~shall be~~ is final and no appeal from such decision ~~shall be~~ is allowed.

~~(H)~~(I) ~~Ten~~ Five years from the date of the person's ~~last conviction~~ reinstatement and every five years thereafter a fourth or subsequent offender whose license has been reinstated pursuant to Section 56‑1‑385 may apply to the Department of Probation, Parole and Pardon Services for removal of the ignition interlock device and the removal of the restriction from ~~his~~ the person’s driver's license. The Department of Probation, Parole and Pardon Services may, for good cause shown, ~~remove the device and remove the restriction~~ notify the Department of Motor Vehicles that the person is eligible to have the restriction removed from the ~~offender's~~ person’s license.

~~(I)~~(J) Except as otherwise provided in this section, it is unlawful for a person issued ~~a driver's license with~~ an ignition interlock ~~restriction~~ restricted license to drive a motor vehicle that is not equipped with a properly operating, certified ignition interlock device. A person who violates this ~~section must be punished in the manner provided by law~~ subsection is in violation of Section 56-1-460(A)(1).

~~(J)~~(K)(1) ~~An offender that~~ A person who is required in the course and scope of ~~his~~ the person’s employment to drive a motor vehicle owned by the ~~offender's~~ person’s employer may drive ~~his~~ the employer's motor vehicle without installation of an ignition interlock device, provided that the ~~offender's~~ person’s use of the employer's motor vehicle is solely for the employer's business purposes. This subsection does not apply to ~~an offender~~ a person who is self‑employed or to ~~an offender~~ a person who is employed by a business owned in whole or in part by the ~~offender~~ person or a member of the ~~offender's~~ person’s household or immediate family unless during the defense of a criminal charge, the court finds that the vehicle's ownership by the business serves a legitimate business purpose and that titling and registration of the vehicle by the business was not done to circumvent the intent of this section. This subsection also does not apply within a year of the beginning of the suspension of a person who is convicted for a second or subsequent conviction of Section 56‑5‑2930, 56‑5‑2933, 56‑5‑2945, or a law of another state that prohibits a person from driving a motor vehicle while under the influence of alcohol or other drugs, is required to have an ignition interlock installed pursuant to Section 56‑5‑2945 or 56‑5‑2990.

(2) Whenever the person operates the employer’s vehicle pursuant to this subsection, the person shall have with the person a copy of the Department of Motor Vehicle’s form specified by Section 56-1-400(B).

(3) This subsection shall not be construed in parallel with all the requirements of Section 56-1-400(B). A waiver issued pursuant to this subsection will be subject to the same review and revocation as described in Section 56-1-400(B).

~~(K)~~(L) It is unlawful for a person to tamper with or disable, or attempt to tamper with or disable, an ignition interlock device installed on a motor vehicle pursuant to this section. Obstructing or obscuring the camera lens of an ignition interlock device constitutes tampering. A person who violates this subsection is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days, or both.

~~(L)~~(M) It is unlawful for a person to knowingly rent, lease, or otherwise provide ~~an offender~~ a person who is subject to the provisions of this section with a motor vehicle without a properly operating, certified ignition interlock device. A person who violates this subsection is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days, or both.

~~(M)~~(N) It is unlawful for ~~an offender~~ a person who is subject to the provisions of this section to solicit or request another person, or for a person to solicit or request another person on behalf of ~~an offender~~ a person who is subject to the provisions of this section, to engage an ignition interlock device to start a motor vehicle with a device installed pursuant to this section. A person who violates this subsection is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days, or both.

~~(N)~~(O) It is unlawful for another person to engage an ignition interlock device to start a motor vehicle with a device installed pursuant to this section. A person who violates this subsection is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days, or both.

~~(O)~~(P) Only ignition interlock devices certified by the Department of Probation, Parole and Pardon Services may be used to fulfill the requirements of this section.

(1) The Department of Probation, Parole and Pardon Services ~~must~~ shall certify whether a device meets the accuracy requirements and specifications provided in guidelines or regulations adopted by the National Highway Traffic Safety Administration, as amended from time to time. All devices certified to be used in South Carolina must be set to prohibit the starting of a motor vehicle when an alcohol concentration of two one‑hundredths of one percent or more is measured and all running ~~re‑tests~~ retests must record violations of an alcohol concentration of two one‑hundredths of one percent or more and must capture a photographic image of the driver as the driver is operating the ignition interlock device. The photographic images recorded by the ignition interlock device may be used by the Department of Probation, Parole and Pardon Services to aid in the Department of Probation, Parole and Pardon Services’ management of the Ignition Interlock Device Program; however, neither the Department of Probation, Parole and Pardon Services, the Department of Probation, Parole and Pardon Services’ employees, nor any other political subdivision of this State may be held liable for any injury caused by a driver or other person who operates a motor vehicle after the use or attempt to use an ignition interlock device.

(2) The Department of Probation, Parole and Pardon Services shall maintain a current list of certified ignition interlock devices and ~~their~~ manufacturers. The list must be updated at least quarterly. If a particular certified ignition interlock device fails to continue to meet federal requirements, the ignition interlock device must be decertified, may not be used until it is compliant with federal requirements, and must be replaced with ~~a~~ an ignition interlock device that meets federal requirements. The cost for removal and replacement must be borne by the manufacturer of the noncertified ignition interlock device.

(3) Only ignition interlock installers certified by the Department of Probation, Parole and Pardon Services may install and service ignition interlock devices required pursuant to this section. The Department of Probation, Parole and Pardon Services shall maintain a current list of vendors that are certified to install the ignition interlock devices.

~~(P)~~(Q) In addition to availability under the Freedom of Information Act, any Department of Probation, Parole and Pardon Services policy concerning ignition interlock devices must be made publicly accessible on the Department of Probation, Parole and Pardon ~~Service's~~ Services’ Internet web site.

~~(Q)~~(R) The Department of Probation, Parole and Pardon Services shall develop policies including, but not limited to, the certification, use, maintenance, and operation of ignition interlock devices and the Ignition Interlock Device Fund.”

SECTION 6. Section 56‑5‑2942(D) of the 1976 Code is amended to read:

“(D) Upon notification by a court in this State or ~~by any other~~ another state of a conviction for a second or subsequent violation of Section 56‑5‑2930, 56‑5‑2933, or 56‑5‑2945, the department ~~must~~ shall require the ~~person~~ convicted person, unless the convicted person is a holder of a valid ignition interlock restricted license, to surrender all license plates and vehicle registrations subject to immobilization pursuant to this section. The immobilization is for a period of thirty days to take place during the driver's license suspension pursuant to a conviction for a second or subsequent violation of Section 56‑5‑2930, 56‑5‑2933, or 56‑5‑2945. The department ~~must~~ shall maintain a record of all vehicles immobilized pursuant to this section.”

SECTION 7. Section 56‑5‑2945(B) of the 1976 Code is amended to read:

“(B)(1) As used in this section, ‘great bodily injury’ means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

(2) The Department of Motor Vehicles ~~must~~ shall suspend the driver's license of a person who is convicted ~~or who receives a sentence upon a plea of guilty or nolo contendere~~ pursuant to this section for a period to include a period of incarceration plus:

(a) for a first offense, forty-five days. Following the suspension, the Department of Motor Vehicles shall require the person to have an ignition interlock device installed on any motor vehicle the person drives for three years ~~for a conviction of Section 56‑5‑2945~~ when ~~‘~~great bodily injury~~’~~ occurs and five years when a death occurs~~. This period of incarceration shall not include any portion of a suspended sentence such as probation, parole, supervised furlough, or community supervision. For suspension purposes of this section, convictions arising out of a single incident shall run concurrently.~~ ; and

(b) for a second or subsequent offense, one year. Following the suspension, the Department of Motor Vehicles shall require the person to have an ignition interlock device installed on any motor vehicle the person drives for three years when great bodily injury occurs and five years when a death occurs.

(3) The ignition interlock device must be administered pursuant to the provisions of Section 56-5-2941.

(4) The Department of Motor Vehicles may waive the ignition interlock device requirement if the department determines that the person has a medical condition that makes the person incapable of properly operating the installed ignition interlock device. In such case, the department shall suspend the person’s driver’s license for a period of incarceration plus three years when great bodily injury occurs and a period of incarceration plus five years when a death occurs.

(5) The person is not required to have an ignition interlock device affixed to the motor vehicle during a period of incarceration.

(6) The period of incarceration does not include any portion of a suspended sentence such as probation, parole, supervised furlough, or community supervision. For suspension purposes of this section, convictions arising out of a single incident must run concurrently.”

SECTION 8. Section 56‑5‑2950(B) of the 1976 Code is amended to read:

“(B) No tests may be administered or samples obtained unless, upon activation of the video recording equipment and prior to the commencement of the testing procedure, the person has been given a written copy of and verbally informed that:

(1) ~~he~~ the person does not have to take the test or give the samples, but that ~~his~~ the person’s privilege to drive must be suspended or denied for at least six months or, as an alternative, the person may enroll in the Ignition Interlock Device Program for at least six months, if ~~he~~ the person refuses to submit to the test, and that ~~his~~ the person’s refusal may be used against ~~him~~ the person in court;

(2) ~~his~~ the person’s privilege to drive must be suspended for at least one month or, as an alternative for a second or subsequent offense, the person may enroll in the Ignition Interlock Device Program for at least two months, if ~~he~~ the person takes the test or gives the samples and has an alcohol concentration of fifteen one‑hundredths of one percent or more;

(3) ~~he~~ the person has the right to have a qualified person of ~~his~~ the person’s own choosing conduct additional independent tests at ~~his~~ the person’s expense;

(4) ~~he~~ the person has the right to request ~~an administrative~~ a contested case hearing within thirty days of the issuance of the notice of suspension; and

(5) if ~~he~~ the person does not request ~~an administrative~~ a contested case hearing or if ~~his~~ the person’s suspension is upheld at the ~~administrative~~ contested case hearing, ~~he must~~ the person shall enroll in an Alcohol and Drug Safety Action Program.”

SECTION 9. Section 56‑5‑2951(H) of the 1976 Code is amended to read:

“(H)(1) ~~If~~ For offenses that occurred prior to October1, 2013, if the person did not request a contested case hearing or the suspension is upheld at the ~~administrative~~ contested case hearing, the person ~~must~~ shall enroll in an Alcohol and Drug Safety Action Program pursuant to Section 56‑5‑2990 and may apply for a restricted license if ~~he~~ ~~the person~~ is employed or enrolled in a college or university. The restricted license permits ~~him~~ the person to drive only to and from work and ~~his~~ the person’s place of education and in the course of ~~his~~ the person’s employment or education during the period of suspension. The restricted license also permits ~~him~~ the person to drive to and from the Alcohol Drug Safety Action Program classes or to a court‑ordered drug program. The department may issue the restricted license only upon showing by the ~~individual~~ person that ~~he~~ the person is employed or enrolled in a college or university, that ~~he~~ the person lives further than one mile from ~~his~~ the person’s place of employment, place of education, or location of ~~his~~ the person’s Alcohol and Drug Safety Action Program classes, or the location of ~~his~~ the person’s court‑ordered drug program, and that there is no adequate public transportation between ~~his~~ the person’s residence and ~~his~~ the person’s place of employment, ~~his~~ the person’s place of education, the location of ~~his~~ the person’s Alcohol and Drug Safety Action Program classes, or the location of ~~his~~ the person’s court‑ordered drug program.

(2) If the department issues a restricted license pursuant to this subsection, ~~it must~~ the department shall designate reasonable restrictions on the times during which and routes on which the ~~individual~~ person may drive a motor vehicle. A change in the employment hours, place of employment, status as a student, status of attendance of Alcohol and Drug Safety Action Program classes, status of attendance of ~~his~~ the person’s court‑ordered drug program, or residence must be reported immediately to the department by the ~~licensee~~ person.

(3) The fee for a restricted license is one hundred dollars, but no additional fee may be charged because of changes in the place and hours of employment, education, or residence. Twenty dollars of this fee must be deposited in the state general fund, and eighty dollars must be placed by the Comptroller General into a special restricted account to be used by the Department of Motor Vehicles to defray the department’s expenses ~~of the Department of Motor Vehicles~~.

(4) Driving a motor vehicle outside the time limits and route imposed by a restricted license ~~by the person issued that license~~ is a violation of Section 56‑1‑460.”

SECTION 10. Section 56‑5‑2951(I) of the 1976 Code is amended to read:

“(I)(1) ~~The~~ Except as provided in subitem (I)(3), the period of a driver’s license, permit, or nonresident operating privilege suspension for, or denial of issuance of a license or permit to, an arrested person who has no previous convictions for violating Section 56‑5‑2930, 56‑5‑2933, or 56‑5‑2945, or ~~any other~~ a law of ~~this State or~~ another state that prohibits a person from driving a motor vehicle while under the influence of alcohol or ~~another drug~~ other drugs within the ten years preceding a violation of this section, and who has had no previous suspension imposed pursuant to Section ~~56-5-2950~~ 56-1-286, ~~or~~ 56‑5‑2951, or 56-5-2990, within the ten years preceding a violation of this section is:

(a) six months for a person who refuses to submit to a test pursuant to Section 56‑5‑2950; or

(b) one month for a person who takes a test pursuant to Section 56‑5‑2950 and has an alcohol concentration of fifteen one‑hundredths of one percent or more.

(2) The period of a driver’s license, permit, or nonresident operating privilege suspension for, or denial of issuance of a license or permit to, an arrested person who has been convicted previously for violating Section 56‑5‑2930, 56‑5‑2933, or 56‑5‑2945, or any other law of this State or another state that prohibits a person from driving a motor vehicle while under the influence of alcohol or another drug within the ten years preceding a violation of this section, or who has had a previous suspension imposed pursuant to Section ~~56‑5‑2950~~ 56‑1‑286, ~~or~~ 56‑5‑2951, or 56‑5‑2990, within the ten years preceding a violation of this section is:

(a) for a second offense, nine months if ~~he~~ the person refuses to submit to a test pursuant to Section 56‑5‑2950 or two months if ~~he~~ the person takes a test pursuant to Section 56‑5‑2950 and has an alcohol concentration of fifteen one‑hundredths of one percent or more;

(b) for a third offense, twelve months if ~~he~~ the person refuses to submit to a test pursuant to Section 56‑5‑2950 or three months if ~~he~~ the person takes a test pursuant to Section 56‑5‑2950 and has an alcohol concentration of fifteen one‑hundredths of one percent or more; and

(c) for a fourth or subsequent offense, fifteen months if ~~he~~ the person refuses to submit to a test pursuant to Section 56‑5‑2950 or four months if ~~he~~ the person takes a test pursuant to Section 56‑5‑2950 and has an alcohol concentration of fifteen one‑hundredths of one percent or more.

(3) In lieu of serving the remainder of a suspension or denial of the issuance of a license or permit, except a suspension or denial pursuant to subitem (I)(1)(b), a person may enroll in the Ignition Interlock Device Program pursuant to Section 56-5-2941, end the suspension, and obtain an ignition interlock restricted license pursuant to Section 56-1-400. The ignition interlock device is required to be affixed to the motor vehicle equal to the length of time the person would originally have been subject to suspension or denial of the issuance of a license or permit. Once a person has enrolled in the Ignition Interlock Device Program and obtained an ignition interlock restricted license, the person is subject to Section 56-5-2941 and cannot subsequently choose to serve the suspension.”

SECTION 11. Section 56‑5‑2951(J) of the 1976 Code is amended to read:

“(J) A person's driver's license, permit, or nonresident operating privilege must be restored when the person's period of suspension or ignition interlock restricted license requirement under subsection (I) has concluded, even if the person has not yet completed the Alcohol and Drug Safety Action Program ~~in which he is enrolled~~. After the person's driving privilege is restored, ~~he must~~ the person shall continue the services of the Alcohol and Drug Safety Action Program ~~in which he is enrolled~~. If the person withdraws from or in any way stops making satisfactory progress toward the completion of the Alcohol and Drug Safety Action Program, the person's license must be suspended until the completion of the Alcohol and Drug Safety Action Program. A person ~~must~~ shall be attending or have completed an Alcohol and Drug Safety Action Program pursuant to Section 56‑5‑2990 before ~~his~~ the person’s driving privilege can be restored at the conclusion of the suspension period.”

SECTION 12. Section 56‑5‑2951(O) of the 1976 Code is amended to read:

“(O) The department ~~must~~ shall administer the provisions of this section ~~and must promulgate regulations necessary to carry out its provisions~~.”

SECTION 13. Section 56‑5‑2951(P) of the 1976 Code is amended to read:

“~~(P)~~ ~~If a person does not request an administrative hearing within the thirty‑day period as authorized pursuant to this section, the person may file with the department a form after enrolling in a certified Alcohol and Drug Safety Action Program to apply for a restricted license. The restricted license permits him to drive only to and from work and his place of education and in the course of his employment or education during the period of suspension. The restricted license also permits him to drive to and from Alcohol and Drug Safety Action Program classes or a court‑ordered drug program. The department may issue the restricted license at any time following the suspension upon a showing by the individual that he is employed or enrolled in a college or university, that he lives further than one mile from his place of employment, place of education, the location of his Alcohol and Drug Safety Action Program classes, or the location of his court‑ordered drug program, and that there is no adequate public transportation between his residence and his place of employment, his place of education, the location of his Alcohol and Drug Safety Action Program classes, or the location of his court‑ordered drug program. The department must designate reasonable restrictions on the times during which and routes on which the individual may drive a motor vehicle. A change in the employment hours, place of employment, status as a student, status of attendance of Alcohol and Drug Safety Action Program classes, status of his court‑ordered drug program, or residence must be reported immediately to the department by the licensee. The route restrictions, requirements, and fees imposed by the department for the issuance of the restricted license issued pursuant to this item are the same as those provided in this section had the person requested an administrative hearing. A restricted license is valid until the person successfully completes a certified Alcohol and Drug Safety Action Program, unless the person fails to complete or make satisfactory progress to complete the program.~~”

SECTION 14. Section 56‑5‑2990(A) of the 1976 Code is amended to read:

“(A)(1) The Department of Motor Vehicles shall suspend the driver's license of a person who is convicted~~, receives sentence upon a plea of guilty or of nolo contendere, or forfeits bail posted~~ for a violation of Section 56‑5‑2930, Section 56‑5‑2933, or ~~for the violation of another law or ordinance of this State or of a municipality of this State~~ a law of another state that prohibits a person from driving a motor vehicle while under the influence of ~~intoxicating liquor, drugs, or narcotics~~ alcohol or other drugs for:

(a)(i) six months for ~~the~~ a first conviction~~, plea of guilty or of nolo contendere, or forfeiture of bail~~ for a person whose blood alcohol concentration is fourteen one-hundredths of one percent or less. The person is eligible to obtain a provisional driver’s license pursuant to Section 56-5-2990;

(ii) six months for a first conviction for a person whose blood alcohol concentration is fifteen one-hundredths of one percent or more. The person is not eligible to obtain a provisional driver’s license pursuant to Section 56-5-2990. The person shall enroll in the Ignition Interlock Device Program pursuant to Section 56-5-2941 and obtain an ignition interlock restricted license pursuant to Section 56-1-400. The ignition interlock device is required to be affixed to the motor vehicle for six months;

(b) one year for ~~the~~ a second conviction~~, plea of guilty or of nolo contendere, or forfeiture of bail~~. At any time after the person has served at least forty-five days of the suspension the person may obtain a route-restricted ignition interlock license pursuant to Section 56-5-2991. The license is valid until the end of the one-year suspension. Following the suspension, the department shall require the person to have an ignition interlock device installed for one year on any motor vehicle the person drives. The ignition interlock device must be administered pursuant to the provisions of Section 56-5-2941. After the person has served the one-year suspension, the department may waive the requirement pursuant to Section 56-5-2941, if the department determines that the person has a medical condition that makes the person incapable of properly operating the installed ignition interlock device. In such case, the department shall suspend the person’s driver’s license for an additional year;

(c)(i) ~~two years~~ one year for ~~the~~ a third conviction~~, plea of guilty or of nolo contendere, or forfeiture of bail~~. At any time after the person has served at least forty-five days of the suspension the person may obtain a route-restricted ignition interlock license pursuant to Section 56-5-2991. The license is valid until the end of the one-year suspension. Following the suspension, the department shall require the person to have an ignition interlock device installed for two years on any motor vehicle the person drives. The ignition interlock device must be administered pursuant to the provisions of Section 56-5-2941. After the person has served the one-year suspension, the department may waive the requirement pursuant to Section 56-5-2941, if the department determines that the person has a medical condition that makes the person incapable of properly operating the installed ignition interlock device. In such case, the department shall suspend the person’s driver’s license for an additional two years; ~~and~~

(ii) one year, if the third conviction occurs within five years from the date of the first offense. At any time after the person has served at least forty-five days of the suspension the person may obtain a route-restricted ignition interlock license pursuant to Section 56-5-2991. The license is valid until the end of the one-year suspension. Following the suspension, the department shall require the person to have an ignition interlock device installed for three years on any motor vehicle the person drives. The ignition interlock device must be administered pursuant to the provisions of Section 56-5-2941. After the person has served the one-year suspension, the department may waive the requirement pursuant to Section 56-5-2941, if the department determines that the person has a medical condition that makes the person incapable of properly operating the installed ignition interlock device. In such case, the department shall suspend the person’s driver’s license for an additional three years; and

(d) a permanent revocation of the driver's license for ~~the~~ a fourth or subsequent conviction~~, plea of guilty or of nolo contendere, or forfeiture of bail~~. If the driver’s license is ever reinstated, the department shall require the person to have an ignition interlock device installed for life on any motor vehicle the person drives. The ignition interlock device must be administered pursuant to the provisions of Section 56‑5‑2941. The department cannot waive the requirement for a person who has a medical condition that makes the person incapable of properly operating the installed ignition interlock device.

(2) Only those violations which occurred within ten years including and immediately preceding the date of the last violation shall constitute prior violations within the meaning of this section. ~~However, if the third conviction occurs within five years from the date of the first offense, then the department shall suspend the driver's license for four years.~~

(3) A person whose license is revoked following conviction for a fourth offense as provided in this section is forever barred from being issued any license by the Department of Motor Vehicles to operate a motor vehicle except as provided in Section 56‑1‑385.”

SECTION 15. Section 56‑5‑2990(B) of the 1976 Code is amended to read:

“(B) A person whose license is suspended under the provisions of this section, Section 56‑1‑286, Section 56-5-2945, or Section 56‑5‑2951 must be notified by the department of the suspension and of the requirement to enroll in and successfully complete an Alcohol and Drug Safety Action Program certified by the Department of Alcohol and Other Drug Abuse Services. ~~A person who must complete an Alcohol and Drug Safety Action Program as a condition of reinstatement of his driving privileges or a court‑ordered drug program may use the route restricted or special restricted driver's license to attend the Alcohol and Drug Safety Action Program classes or court‑ordered drug program in addition to the other permitted uses of a route restricted driver's license or a special restricted driver's license.~~ An assessment of the extent and nature of the alcohol and drug abuse problem, if any, of the applicant must be prepared and a plan of education or treatment, or both, must be developed for the applicant. Entry into and successful completion of the services, if the services are necessary, recommended in the plan of education or treatment, or both, developed for the applicant is a mandatory requirement of the issuance of an ignition interlock restricted license and of the restoration of driving privileges to the applicant whose license is suspended pursuant to this section. For a first offense suspension pursuant to this section or Section 56-5-2945, entry into the program is required for issuance of an ignition interlock restricted license and completion of the program is required for the restoration of driving privileges. The Alcohol and Drug Safety Action Program shall determine if the applicant has successfully completed the services. Alcohol and Drug Safety Action Programs shall meet at least once a month. The person whose license is suspended ~~must~~ shall attend the first Alcohol and Drug Safety Action Program available after the date of enrollment.”

SECTION 16. Section 56‑5‑2990(F) of the 1976 Code is amended to read:

“~~(F)~~ ~~Except as provided for in Section 56‑1‑365(D) and (E), the driver's license suspension periods under this section begin on the date the person is convicted, receives sentence upon a plea of guilty or of nolo contendere, or forfeits bail posted for the violation of Section 56‑5‑2930, 56‑5‑2933, or for the violation of any other law of this State or ordinance of a county or municipality of this State that prohibits a person from operating a motor vehicle while under the influence of intoxicating liquor, drugs, or narcotics; however, a person is not prohibited from filing a notice of appeal and receiving a certificate which entitles him to operate a motor vehicle for a period of sixty days after the conviction, plea of guilty or nolo contendere, or bail forfeiture pursuant to Section 56‑1‑365(F).~~”

SECTION 17. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 18. This act takes effect on October 1, 2013.

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